

(4)

Flock to Flock

**B R O I L E R   G R O W I N G   A G R E E M E N T**

This agreement made and entered into the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between CONAGRA POULTRY COMPANY of \_\_\_\_\_ hereinafter called "CONAGRA" and \_\_\_\_\_ hereinafter called "GROWER". In consideration of the mutual promises set forth the parties agree as follows:

**Section A.**

**GROWER AGREES TO:**

1. Provide proper housing, fuel, equipment, water, electricity, litter and all labor necessary to properly raise a placed broiler flock to maturity, as determined by ConAgra.
2. Abide by ConAgra's management recommendations, including but not limited to, watering, feeding, sanitation, litter, vaccination, medication, house temperature, air quality, and lighting.
3. Be present at time baby chicks arrive and furnish sufficient labor to unload chicks.
4. Reimburse ConAgra for any charges for towing or wrecker service incurred because of inadequate access roads or loading areas.
5. Prepare house for catching and be present at time birds are caught.
6. Properly dispose of dead birds, manure, and poultry litter in accordance with Government Regulations and ConAgra recommendations.
7. Prohibit the presence on grower's premises of any poultry, fowl, turkey, ostrich, emu, rhea, guineas or birds of any kind whatsoever other than birds placed thereon by ConAgra.

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8. Return to ConAgra, all unused feed, medication, or other supplies furnished by ConAgra, for proper credit to the flock.
9. Not use any insecticides, disinfectants, herbicides, pesticides, wood preservatives, floor treatment, rodenticide or other materials on the farm premises without ConAgra's written approval.
10. That representatives or agents of ConAgra may enter upon the premises for the purpose of inspecting the broilers, and consultation with reference to the management of the flock at any time prior to or after chick placement.
11. Provide a safe work environment for the grower and any and all employees or representatives of ConAgra and their vehicles that from time-to-time must enter upon the premises to carry out their work assignments.
12. That any and all expenses incurred by ConAgra on Grower's behalf are hereby authorized to be deducted from Grower's payment provided that an itemization of such deductions is provided to Grower in writing at the time of such payment.
13. Conform his performance under the terms of this agreement to all applicable regulations and laws, whether state, federal or local as the same may affect the growing of broilers for purposes of hygiene, construction, health, safety or otherwise. Management and supervision of the flocks shall remain the principle responsibility and liability of Grower, notwithstanding that ConAgra reserves the right from time to time to make certain suggestions, recommendations, and otherwise protect its interest in the flock.

**Section B.**

**CONAGRA AGREES TO:**

1. Deliver broiler chicks to Grower at his/her farm in \_\_\_\_\_ generally known as the \_\_\_\_\_ Farm, having usable square feet. Approximately \_\_\_\_\_ chicks.
2. Furnish all feed, vaccine and medication necessary for the care and raising of said birds.
3. Load and haul the flock to market.

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4. Maintain records of each Grower's account.
5. Furnish copies of chick delivery tickets, feed tickets, medication tickets, live weight tickets, U.S.D.A. condemnation certificate, settlement sheet, and weekly ranking sheet to all growers in the payment comparison.
6. Determine when and where the broilers shall be processed and to notify the Grower of the processing arrangements.
7. Pay the Grower for services hereunder in accordance with Exhibit A. (Example attached to Exhibit A.)

**Section C.**

**IT IS MUTUALLY AGREED:**

1. That the term of this Agreement is for that period required to grow and deliver one (1) flock of broilers, unless cancelled by either party in accordance with provisions contained in this Agreement. It shall automatically renew for a like successive term unless cancelled by either party upon ten (10) days written notice thereof or superseded by a new contract. Notice shall be effective upon receipt.
2. That title to all broilers, feed, medication and supplies delivered to Grower by ConAgra shall at all times vest in ConAgra, and Grower will not create, nor suffer to be made or created, any liens of any kind against said commodities. Grower agrees to execute, in the form and substance as requested by ConAgra, any and all documents as deemed reasonably necessary by ConAgra to notify third parties of ConAgra's exclusive ownership interest in and to said commodities.
- ✓ 3. That upon the failure of Grower to comply with any of the terms or conditions of this Agreement, ConAgra shall have the right, at its option, to take immediate possession of the broilers and to raise the same to maturity on the land of the Grower, or to remove the broilers from the possession of the Grower and raise same to maturity elsewhere, and to declare this Agreement immediately cancelled and terminated. In either event, the Grower agrees that any expense or cost incurred by ConAgra in raising the broilers to maturity shall be paid by the Grower.

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4. That the terms and condition of this Agreement shall apply to all flocks of broiler chickens placed by ConAgra with Grower. It is expressly understood and agreed that this Agreement shall be renewed only by ConAgra delivering chicks from time-to-time hereafter to Grower and Grower accepting delivery of same. Each party agrees to exercise its best effort to notify the other, in advance, of its intention to discontinue the project of raising broiler hereunder, but failure to give such notice shall not constitute a renewal of the Agreement.
5. That Grower is an independent contractor and is not to be considered in any way an employee of ConAgra and Grower shall be solely responsible for his/her own activities. Grower will be responsible for all of his/her own agents, employees and sub-contractors as to wages, Workers Compensation and unemployment insurance, any and all other normal and usual employer and employee expenses, and shall be responsible for all their actions during their employment with the grower.
6. ConAgra at its option may terminate this Agreement upon any sale, transfer or exchange of Grower's houses, whether by operation at law or sale unless expressly agreed to in writing by ConAgra. The Grower agrees that the Agreement is not transferrable or assignable without prior written consent of ConAgra.
7. Subject to the provision for arbitration as herein provided, Grower agrees to indemnify, defend, and hold ConAgra harmless against any and all claims, damages, (liabilities, losses, actions, and expenses, including reasonable attorney fees, on account of personal injury and/or property damage, including injury to any employee of or to any property of ConAgra) caused by or resulting from negligent acts or omissions of Grower or his agents, employee or sub-contractors in the performance of Grower's duties hereunder. Grower further agrees to indemnify, defend, and hold ConAgra harmless from and against any and all losses, claims, damages, actions, including Federal, State or Local administrative actions, rulings and all other actions of any nature whatsoever which are in any manner caused by or which results from the presence of the broilers on the premises of Grower, including, but not necessarily limited to matters involving emission complaints, disposal complaints, or pollution complaints. It being expressly understood and

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agreed that all manure waste material produced or resulting from the broilers shall be the sole property and responsibility of the Grower from and after its production or creation. ConAgra agrees to indemnify and hold Grower harmless from and against any claims, damages or liabilities for personal injury or property damage arising out of the sole negligence of ConAgra in the performance of ConAgra's duties hereunder.

8. All actions and proceedings with regard to the Agreement, including arbitration as hereafter provided, shall be exclusively filed, heard and resolved in Coffee County, Alabama for the purpose of jurisdiction and venue. The laws of Alabama shall exclusively apply and govern this Agreement.
9. This Agreement voids and nullifies any and all previous Broiler Agreements entered into by the parties.
10. That in the event the parties hereto shall fail to perform their obligation hereunder the same shall not constitute a breach of this Agreement, when and while, and to the extent that such failure shall be caused by an act of God, fire, riot, work stoppage, war, compliance with acts or requests of any Governmental authority, or by any cause beyond the reasonable control of the non-performing party.
11. ConAgra may terminate this Agreement during its term, if for any nine (9) consecutive broiler flocks grown by Grower, more than 1/2 of the flocks produced by Grower are ranked in the poorest (highest cost) 25% compared to the "Weighted Average Formula Cost".
12. All claims between Grower and ConAgra arising out of this Agreement shall be submitted to arbitration. The following procedure shall apply:
  - (a) Either party may demand arbitration in writing within ten (10) days after the alleged claim was known or reasonably should have been made known. Such demand shall include the name and address of the arbitrator appointed by the party demanding arbitration.
  - (b) Within ten (10) days after such demand the other party shall name an arbitrator and notify the other party of the name and address.

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- (c) The two (2) arbitrators shall within ten (10) days request a panel of seven (7) to be designated by the American Arbitration Association, one of whom shall be selected as the third arbitrator. The party requesting arbitrations shall make the first challenge/strike from the panel of seven. The third arbitrator shall serve as chair of the proceedings.
- (d) All arbitrators shall be persons having knowledge of and experience in the broiler production industry.
- (e) Each party shall bear his own arbitration costs and expenses, and the costs and expenses of the third arbitrator shall be shared jointly and equally between the parties. However, it is expressly provided that, in order to encourage arbitration as a method of claims resolution, ConAgra does hereby agree to pay all costs and expenses of the said third arbitrator in excess of \$1,000. The cost of the third arbitrator to Grower will not exceed \$500.
- (f) The arbitration hearing shall be held at the venue provided herein and at least twenty (20) days notice of the hearing date, time and location shall be provided to the parties.
- (g) The arbitrators selected shall hear the evidence and testimony offered by both parties, and the arbitration hearing shall be concluded within ten (10) days unless otherwise ordered by the arbitrators and the arbitrators will make a majority decision within a reasonable period of time. Both parties shall be allowed a period of time to submit post-hearing briefs within a period of time designated by the arbitrator acting as chairperson. An award rendered by a majority of the arbitrators appointed pursuant to this Agreement shall be final and binding on all parties unless the finding is arbitrary or capricious. Such judgement or award rendered by a majority of the arbitrators may be entered by either party in any court as herein provided having jurisdiction.
- (h) The parties stipulate that the provisions hereof shall be a complete defense to any suit, action, or proceeding instituted in any Federal, State or local court or before any administrative tribunal with

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respect to any controversy or dispute arising during the period of the Agreement and which is arbitrable as herein set forth. The arbitration provisions hereof shall, with respect to such controversy or dispute, survive the termination or expiration of this Broiler Growing Agreement.

- (i) Nothing herein contained shall be deemed to give the arbitrators any authority, power, or right to alter, change, amend, modify, add to or subtract from any of the provisions of this Broiler Growing Agreement.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Social Security Number

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GROWER

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CONAGRA

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